

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY Caption in Compliance with D.N.J. LBR 9004-1(b) ANSELL GRIMM & AARON, P.C. Joshua S. Bauchner, Esq. Anthony J. D’Artiglio, Esq. Seth M. Rosenstein, Esq. Ansell Grimm & Aaron, P.C. 365 Rifle Camp Road Woodland Park, New Jersey 07424 <i>Attorneys for Tarvisium Holdings, LLC and 45N12E, LLC</i>	
In re: DUKAT, LLC, <div style="text-align: center;">Debtor-in-Possession.</div>	Case No.: 21-14934 (KCF) Honorable Kathryn C. Ferguson, U.S.B.J. Chapter 11 (Subchapter V) Hearing Date: October 26, 2021
DUKAT, LLC, <div style="text-align: center;">Plaintiff/Counterclaim Defendant,</div> v. TARVISIUM HOLDINGS, LLC and 45N12E, LLC, <div style="text-align: center;">Defendants/Counterclaim Plaintiffs.</div>	Adv. Pro. No. 21-01315 (KCF)
TARVISIUM HOLDINGS, LLC and 45N12E, LLC, <div style="text-align: center;">Third-Party Plaintiffs,</div> v. ELLIOTT KATTAN, MOURAD “MITCH” KATTAN, 36LOWER, INC., and BEN SCHWARTZ, <div style="text-align: center;">Third-Party Defendants.</div>	

**DECLARATION OF ANTHONY J. D’ARTIGLIO, ESQ. IN SUPPORT OF
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

I, Anthony J. D'Artiglio, Esq., declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an attorney at the law firm of Ansell, Grimm & Aaron, P.C., attorneys for Defendants/Counterclaim Plaintiffs/Third-Party Plaintiffs Tarvisium Holdings, LLC and 45N12E, LLC ("Defendants"). I submit this Declaration in further support of Defendants' Motion for Relief from the Automatic Stay.

2. Annexed hereto as **Exhibit A** is a true and correct copy of an October 15, 2021 Order entered in the U.S. District Court for the Western District of Missouri, Western Division captioned *Tarvisium Holdings, LLC, et al. v. Dukat, LLC, et al.*, Case No. 4:19-cv-00086-CV-W-DGK.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

By: s/ Anthony J. D'Artiglio
Anthony J. D'Artiglio, Esq.

Dated: October 22, 2021

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

TARVISIUM HOLDINGS, LLC, and
45N12E, LLC,

Plaintiffs/Counter Defendants,

v.

DUKAT, LLC,
36LOWER, INC.,
ELLIOTT KATTAN,
MOURAD (“MITCH”) KATTAN, and
BEN SCHWARTZ,

Defendants/Counter Plaintiffs,

v.

ANA PIEROPAN, and
MICHELE PIEROPAN,

Third-Party Defendants.

No. 4:19-CV-0086-DGK

ORDER STAYING CASE

This lawsuit arises from Plaintiffs’ purchase of an e-Commerce business from Defendant Dukat, LLC (“Dukat”). Plaintiffs allege that Defendants used unlawful methods to induce Plaintiff Tarvisium Holdings, LLC (“Tarvisium”) to buy the business, including misrepresenting the company’s financial health during negotiations by inflating the company’s historical sales and profitability. Defendants have counterclaimed against Plaintiffs and their principals for breach of the sales agreement by failing to make payments on promissory notes to buy the business.

The procedural posture of this case is as follows. On June 16, 2021, Defendant/Counter Plaintiff Dukat, LLC (“Dukat”) filed a voluntary petition under Chapter 11 (Subchapter V) of the

United States Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey. As a result of that filing, this litigation was automatically stayed with respect to Dukat. The bankruptcy court subsequently extended the automatic stay to non-Debtors Elliott Kattan and Mourad Kattan, who are also Defendants in this case. The stay was not extended to Defendants/Counter Plaintiffs 36Lower, Inc. and Ben Schwartz.

A two-week jury trial in this case is currently set to begin December 13, 2021, and a pretrial conference is currently scheduled for November 22, 2021. Four sanctions-related motions are pending.

Now before the Court is Plaintiffs' Withdrawal of Jury Trial Demand. ECF No. 258. In it, Plaintiffs withdraw their demand for a jury trial, and note the following claims brought by Plaintiffs are currently not subject to any stay and remain for trial:

- Count I for Declaratory Judgment against Defendant 36Lower;
- Count II for Breach of Contract (Software Services Agreement) against Defendant 36Lower;
- Count III for Breach of the Covenant of Good Faith and Fair Dealing against Defendant 36 Lower;
- Count IV for Fraudulent Inducement against Defendant Schwartz; and
- Count V for Negligent Misrepresentation against Defendant Schwartz.

Plaintiffs note the following counterclaims brought by Defendants Schwartz and 36Lower are currently not subject to any stay and remain for trial:

- Count VII for Breach of Agreement (Software Services Agreement and Services Agreement) by Defendant 36Lower;
- County IX for Defamation by Defendant Schwartz; and

- Count VIII for Quantum Meruit by Defendant 36Lower.

Plaintiffs observe that if and when the stay is lifted as to Defendants Elliott and Mourad Kattan, the following claims against them remain for trial:

- Count IV for Fraudulent Inducement against Defendant Elliott Kattan;
- Count V for Negligent Misrepresentation against Defendant Elliott Kattan;
- Count VI for Tortious Interference against Defendant Elliott Kattan; and
- Count VII for Fraudulent Inducement/Misrepresentation against Defendant Mourad Kattan.

If the stay is lifted as to the Kattan Defendants, the following counterclaim remains for trial:

- Count IX for Defamation by Defendant Elliott Kattan.

Plaintiffs' summary of the status of the all the claims in this case is helpful.

When Dukat filed for bankruptcy, the Court's hope was that the bankruptcy proceeding would be resolved quickly, and a trial could occur in the current December setting. That plan is no longer viable. The Court has no desire to try this case in a piecemeal fashion, and so to preserve scarce judicial resources, the Court on its own motion stays this case pending resolution of the New Jersey bankruptcy proceeding. Once the bankruptcy stay is lifted, the Court will hold a scheduling conference, revisit Plaintiffs' withdrawal of their request for a jury trial, and take up any other issues the parties would like to address.

The Court directs Plaintiffs to file a status update every thirty days on the progress of the New Jersey Bankruptcy proceeding and any other developments in the case.

IT IS SO ORDERED.

Date: October 15, 2021

/s/ Greg Kays
GREG KAYS, JUDGE
UNITED STATES DISTRICT COURT